NO. 83-1282

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

MATTHEW SHUTTLEWORTH and
DEBORAH SHUTTLEWORTH,

Petitioners,

VS.

CATHOLIC FAMILY SERVICES, and
LICENSED FOSTER PARENTS,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

MICHAEL E. BRODOWSKI
2304 Memorial Parkway, S.
Huntsville, AL 35801
(205) 534-4571

Counsel of Record for
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QUESTIONS PRESENTED FOR REVIEW

The ultimate question presented for review is: Whether the Alabama Court of Civil Appeals erred in affirming the Judgment of the Family Court of Jefferson County, Alabama, in which it was held that although service of process was technically defective, actual notice of a Hearing to terminate parental rights, coupled with a voluntary execution of a Consent to Adoption and Waiver of Rights to appear at said Hearing and to be represented by Counsel, presented a meaningful opportunity to Petitioner, Matthew Shuttleworth, to be present and heard concerning said termination of parental rights, which satisfied the Constitutional requirements of due process of law.

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STATEMENT OF THE CASE

This case began March 11, 1980, in the Family Court of Jefferson County, Alabama, by the filing of a Petition to terminate the parental rights of Deborah Ann Kelley and Matthew Shuttleworth to a child born out of wedlock on January 1, 1980. By Judgment dated March 11, 1980, the parental rights of Deborah Kelley were terminated.

On that day, a notice was sent to the putative father, Matthew Shuttleworth, at his home address in Decatur, Alabama. The letter was delivered to the address and Hugh R. Shuttleworth, the father of Matthew Shuttleworth, signed the receipt for said letter. The letter was placed in Matthew Shuttleworth's room and he was informed that the letter had arrived. Matthew Shuttleworth testified that he

did receive the letter, that he knew it was addressed to him, and that it was addressed from the Family Court of Jefferson County. He stated he discussed the letter with Deborah Kelley who told him the letter was a notice of Hearing to be held on March 25, 1980, concerning his parental rights and also contained certain papers for him to sign. Matthew Shuttleworth was aware at the time he received the letter that the parental rights of Deborah Kelley were terminated on March 11, 1980, by her consent.

Deborah Kelley delivered to an agent of Catholic Family Services a Consent to Adoption and Waiver of Appearance, Waiver of further notice in the proceeding and Waiver of the right to Counsel, signed by Matthew Shuttleworth, dated March 28, 1980.

Approximately three months later, Petitioner, Matthew Shuttleworth and Deborah Kelley Shuttleworth, began efforts to set aside the Judgment terminating their parental rights. Following a long line of appeals, the Court of Civil Appeals of Alabama affirmed the finding of the Family Court of Jefferson County, Alabama, that Matthew Shuttleworth had received actual notice of the pending proceeding to terminate his parental rights and that he had been afforded adequate opportunity to be heard on that matter and that he had knowingly consented to the adoption and effectively waived all other parental rights to the child, the cumulative effect of which satisfies the Constitutional requirements of due process of law.

ARGUMENT

Respondents move the Court to deny the Petition for Writ of Certiorari to the Court of Civil Appeals of Alabama on the grounds that the Petition fails to follow the rules of this Court by failing "to specify the stage in the proceedings, both in the Court of First Instance and in the Appellate Court, at which the Federal questions sought to be reviewed were raised: The method and manner of raising them and the way in which they were ruled upon by the Court; such pertinent quotation of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matter appears as will show that the Federal question was timely and properly raised so as to give this Court jurisdiction to review the judgment on Writ of

Certiorari. Rule 21(h). As further grounds for the denial of the Petition, Respondent would show unto the Court that the Petitioners have been afforded due process of law at all stages of the proceedings in the Alabama State Courts.

The facts in this case, as determined by the Alabama Courts, involve unwed parents, whose parental rights were terminated by Judicial Decree. The Trial Court stated and found that:

> "The mother's consent to support the adoption is unquestioned. She had previously sought an abortion of this unborn child but was found by the doctors to have been too far into her pregnancy. On March 11, 1980, she signed an affidavit requesting the "the court to terminate all my parental rights in and to the custody of this child in order that an adoptive placement might be made."
>
> The father's behavior and actions from the time the mother first indicated her desire for an abortion until after his rights were termina-

ted on March 25, 1980, are a study in ambivalence and indecisiveness. Time after time the father had the opportunity, had he so desired, to stop the proceedings toward the termination of his parental rights. He consistently vacillated or remained mute when he should have been forthright, outspoken, even obtrusive and vociferous with his intentions on such an important matter.

Matthew Shuttleworth and his mother journeyed with Deborah Kelley and her parents to Atlanta, Georgia on November 1, 1979, to see a doctor about an abortion for Deborah. Deborah had told Matthew that she had contacted the Catholic Social Services and Laura Dinwiddie (sic) before the child's birth on November 2, 1979, and wanted to place the child for adoption.

The child was born on January 1, 1980. Matthew knew that Laura Dinwiddie picked up the child at the hospital on January 4, 1980, for the purpose of adoptive placement. Not until almost six months later did Matthew contact the Catholic Social Services, and he never contacted this court.

Deborah told Matthew that he had rights over the child and

Matthew stated he was going to get a lawyer and fight. He knew that Deborah went to court on March 11, 1980, and that her parental rights were terminated.

Matthew's father signed for the letter from the Family Court of Jefferson County on March 13, 1980. Matthew received the court letter on March 14, 14, or 15, 1980, and turned the letter over to Deborah. She told him it concerned his court hearing which was to be held in two weeks. But the letter was placed in Deborah's glove compartment of her car and it remained there until March 21st or March 28th, at which time the letter was voluntarily signed by Matthew and turned over to Laura Dinwiddie (sic) of the Catholic Social Services.

It is uncontroverted that Matthew voluntarily signed the document which constituted a waiver of his rights. Although the paper was not notarized, it is unconceivable that Matthew, a college student, did not know what he was signing.

Matthew's excuses that he did not read the document on one of these dates because he might be late for a cosmetology class, and that he

believed the document was for "confidentiality" purposes were anemic and lacked credence. In fact, much of his testimony appeared disingenous.

The Court finds under Matthew Shuttleworth's testimony and the undisputed evidence, that prior to the hearing, he received from this court and possessed a document fully disclosing the nature of the proceeding, the time and place of the hearing and his right to counsel. It was his sole decision not to open it, if in fact he did not.

The Court further finds that he knew Deborah had been to this court on March 11, 1980, concerning the adoption of the child and on March 12, 1980, the child's mother had informed him there would be a hearing on March 25, 1980, in this court about terminating his parental rights. He received the registered letter from this court on March 13, 14, or 15, 1980. He was informed that it pertained to termination of his rights. He was given the name and whereabouts of the Judge handling the case prior to the hearing.

That by his action and his conduct he clearly waived his rights.

> All the parties were at all times residents of Alabama and the fact that the child was born in Tennessee is immaterial.
>
> This Court after seeing and hearing Matthew Shuttleworth testify, together with the other testimony received is convinced that the father's acquiesance amounted to a waiver of his rights and that he in effect consented to the termination of his rights to the child.
>
> The Court finds that under all the evidence heard in open court, most of which is undisputed, that the father received service from the court that was more than sufficient to satisfy all constitutional rights to notice and due process, and that it is for the welfare and in the best interest of the innocent child that this long tragic court proceeding be ended. (Full opinion contained in appendix).

Under Alabama law a "Trial Court's findings are to be accorded the same presumptions as a jury's verdict and

will not be disturbed on appeal unless plainly and palpably wrong or against the greatest preponderance of the evidence." McBee v. McBee, 91 So. 2d 675, 265 Ala. 414.

On appeal of the Trial Court's findings to the Court of Civil Appeals of Alabama, the Court found and held as follows:

> (1) Though the mother is now claiming to have been misled and confused by the representations of the social worker for Catholic Services, Mrs. Dinwiddie, there is more than sufficient evidence to conclude the contrary. She first sought an abortion, traveling with her parents and Shuttleworth to Atlanta for that purpose. Upon being informed that an abortion was not medically advised, she sought the aid of Catholic Services in giving birth at a place away from her hometown. She allowed her child to be taken from the hospital and placed in a foster home. She signed a petition and consent for termination of her parental rights and those of the father, and she appeared in

court when the judgment of termination of her parental rights was entered. The court proceedings were instituted away from her home county at her direction. She served as intermediary and informant between Catholic Services and Shuttleworth, keeping him informed of each event and step toward adoption of their child. She contrived, consented to, and participated in every aspect of the proceeding. She therefore may not change her mind and undo what she has done.

(2) The father, Shuttleworth, though not physically participating as fully as the mother, was kept fully informed of everything she was doing. He was present on the trip to Atlanta to secure an abortion. He was present at the birth of the child in Tennessee. He was informed of the role of Catholic Services in that birth and the removal of the child from the hospital. He never saw his child nor contributed to the expense at her birth. He knew that the mother had agreed to her adoption long before she was born on January 1, 1980. He was informed by the mother of the termination of her rights and her consent thereto on March 11, 1980. He admitted to being informed that there was

scheduled another hearing for March 25, 1980, of which he was to receive notice, to terminate his parental rights. He acknowledged that he did receive the registered letter advising him of the hearing and containing consent and waiver form, albeit the letter was not served procedurally according to statute. He acknowledged that he subsequently signed the form contained in the letter at the request of the mother and gave it to her to return to Mrs. Dinwiddie for filing. The court found Shuttleworth had the letter at least ten days prior to the hearing on March 25. He denies opening the letter and examining its contents though he gave it to the mother and discussed with her its contents and the form for waiver of notice and consent. He admits failing to keep an appointment with Dinwiddie set for the morning of March 25. The court was at liberty to disbelieve his denial of opening and examining an official letter from the court, when he knew of its purpose. In fact, the testimony of Shuttleworth and the mother pertaining to misrepresentation and misunderstanding of events leading to the adoption is subject to disbelief.

. . .The form he signed was an admission of knowledge of the pending proceedings and of their purpose. It contained an acknowledgment of service and waiver of further notice. There was consent to termination of parental rights and to placement for permanent custody and adoption. We recognize that the waiver was apparently signed after the hearing and judgment and was not filed in the court. However, it is evidence and indication of the knowledge and state of mind of Shuttleworth after he knew of the judgment terminating the rights of the mother and the pending hearing as to his parental rights.

For some three months subsequent to the termination of parental rights and the direction by the court to find adoptive parents, the Shuttleworths made no effort to set aside the judgment. When this proceeding was begun the child had been in the custody of Catholic Services for her lifetime of nearly six months. The mother had seen her no more than three times. The father had never seen her. Foster parents had fed her, held her, loved her while the parents proceeded with their lives as though they never had a child, even though they were in daily company and subse-

quently married. The dark secret of her birth and being remained hidden from their friends. (Full opinion contained in appendix).

This Court has stated: "many controversies have raged about the cryptic and abstract words of the due process clause, but there could be no doubt that at a minimum, they require the deprivation of life, liberty, or property by adjudication be proceeded by notice and opportunity for Hearing appropriate to the nature of the case." (emphasis added) Mullane v. Central Hanover Bank and Trust Company, 339 U.S. 306. With these words, the Court has established that due process requirements must be examined on a case by case basis for determination of whether a parties' constitutionally protected rights have been protected. It is fundamental in the requirements imposed by

the due process clause that parties in legal proceedings be afforded the opportunity to be heard. However, nowhere does the due process clause, or the cases interpreting it, provide that a party shall be made to be heard. Grannis v. Ordean, 234 U.S. 385. Respondent submits that in the instant case, the facts demonstrated above, reflect notice and opportunity to be heard appropriate to a case terminating parental rights.

The Petitioner cites Armstrong v. Manzo, 380 U.S. 545 (1965) to support its proposition that the Alabama Court of Last Resort has decided a Federal Constitutional question in a way which conflicts with the decisions of this Court. In Armstrong, the Court held that failure to notify a divorced father

of the pendency of proceedings which would result in adoption of his daughter deprived him of due process of law so as to render the Decree in question invalid.

The instant case is easily distinguishable from the Armstrong case in that Armstrong was not afforded any notice of the pending proceedings concerning the adoption of his child. Whereas in the instant case, by testimony elicited at the Trial from the Petitioner himself, Matthew Shuttleworth, it was clearly shown that Shuttleworth had notice of the pending proceeding designed to terminate his parental rights by virtue of verbal communication with the mother of the child; receipt of a certified letter from the Family Court of Jefferson County, stating the date, time, and place of the Hearing to termi-

nate his parental rights; and the execution of a document in which he consented to the placing of the child for adoption, acknowledgement of the date, time, and place of Hearing to terminate his parental rights; and Waiver of his appearance at said proceeding; and Waiver of his right to counsel.

The opportunity to be heard is one which must be granted at a meaningful time and in a meaningful manner; by virtue of a manner reasonably calculated under all the circumstances to apprise the interested party of the pendency of an action and afford them an opportunity to present their objections. Milliken v. Meier, 311 U.S. 457. The burden to take affirmative action was on the shoulders of Matthew Shuttleworth upon his having actual notice of the time, date, and location of a Hearing to terminate

his parental rights. He was not placed in a position similar to Armstrong, wherein his first notice and opportunity to appear to contest the action was following the Hearing to terminate his parental rights. Matthew Shuttleworth received notice reasonably calculated to afford him the opportunity to be present at the Hearing to terminate his parental rights.

It is well settled that the right to be notified has little reality or worth unless one is informed that the matter is pending and the party can choose for himself whether to appear or default, acquiesce or contest the proceeding. Schroder v. City of New York, 371 U.S. 208. It is likewise clear that Matthew Shuttleworth chose not to appear, chose to acquiesce, and chose not to contest the Hearing to terminate

his parental rights, having full knowledge of the consequences of his acts.

The Petitioner cites to the Court its recent decision in Lehr v. Robertson, U.S._____, 103 S.Ct. 2985 (1983), as setting forth that an unwed father's relationship with an illegitimate child is to be afforded subtantial protection under the due process clause. As the Court stated in Lehr, at page 2993,

> "when an unwed father demonstrates a full commitment to the responsibilities of parenthood by 'com(ing)' forward to participate in rearing up his child," Caban v. Mohammed, 441 U.S., 380 at 392, 99 S.Ct., at 1768, his interest in personal contact with his child acquired substantial protection under the due process clause. At that point, it may be said that he "act(s) as a father toward his children". Id. at 389 n. 7, 99 S.Ct. at 1766, n. 7. But, the mere existence of a biological link does not merit equivalent Constitutional protection. The actions of Judges neither create nor

> sever genetic bonds. "The importance of the familial relationship, to the individuals involved and to the society, stems from the emotional attachments that derive from the intimacy of daily association and from the role it plays in promoting a way of life through the instruction of children as well as from the fact of blood relationship." Smith v. Organization of Foster Families for Equality and Reform, 431 U.S. 816, at 844, quoting Wisconsin v. Yoder, 406 U.S. 205, at 231-233.

The Court points out that an opportunity is presented to the natural father to develop a relationship with his children. There is no requirement that he must take advantage of that opportunity, and should he fail to do so, he must accept the consequences of his act. As in Lehr, the Petitioner has never had any significant custodial, personal, or financial relationship with his illegitimate child. Also like Lehr, he has received the benefit of his Constitutio-

nal right to due process and the opportunity to form such a relationship before his parental rights were terminated.

Proposition two of the Petition states that the denial of the right to cross-exam the adoptive parents denied Matthew Shuttleworth Constitutional rights. The Petitioner repeatedly argues that nothing has been elicited in the record to determine that Matthew Shuttleworth is an unfit father. Petitioner has failed to see that this is not an issue to be presented before the Court. This issue has never been raised as to the fitness or unfitness of Shuttleworth as a father. The entire matter revolves around his knowing and effectual Consent and Waiver of appearance at a parental rights termination Hearing.

Proposition three of the Petition states that the Alabama Courts have used ex parte communications denying the Petitioner a full Hearing and due process of law in conflict with the decision of the Court in Morgan v. United States, 304 U.S. 1. Petitioner fails to recognize the fact that the Trial Court stated that the ex parte communications which the Petitioner complains of were not considered by the Court and has no credence or effect on the decision of the Court. It is clear that when the Court has not considered evidence, whether or not it is reflected in the Court file, it will not be a grounds for an attack on an otherwise valid decision. All cases cited by Petitioner supporting this proposition, the offending documents, ex parte communications, were considered by the regulatory commission

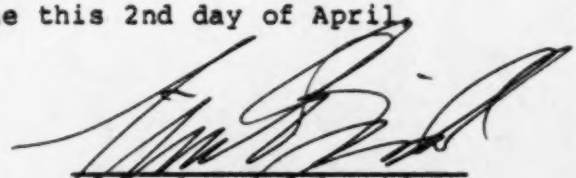
or fact finding body in determining their final decision.

CONCLUSION

It is clear that the Petitioner, Matthew Shuttleworth, was not denied due process of law in the matter of the termination of his parental rights. He was given adequate notice, reasonably calculated to apprise him of the pending proceedings and designed to afford him the opportunity to oppose the proceedings. By his own admission, he did have actual knowledge of the pending proceeding; and by his inaction, he acquiesced and ratified the proceedings through the statements set forth in the Consent to Adoption and Waiver of further notice, appearance, and counsel in connection with said proceeding which he voluntarily executed. Likewise, it is clear that Deborah Shuttleworth did voluntarily and knowingly surrender all her parental rights.

dent upon the following parties who are all the parties required to be served with the same: Joel E. Dillard, counsel for Petitioners, Matthew Shuttleworth and Deborah Kelley Shuttleworth, P. O. Box 6173, Birmingham, Alabama 35205, by mailing said copies to him by depositing the same in the United States Post Office with first class, priority, postage prepaid.

Done this 2nd day of April, 1984.



Michael E. Brodowski
Attorney for Respondent,
Catholic Family Services
2304 Memorial Parkway, S.
Huntsville, AL 35801
Telephone: (205) 534-4571
(Admission date 3/19/84)

For these reasons and for the welfare and in the best interest of the innocent child, which is the subject of this proceeding, the Petition is due to be denied.

Respectfully submitted,

Michael E. Brodowski
Attorney for Respondent,
Catholic Family Services
2304 Memorial Parkway, S.
Huntsville, AL 35801
Telephone: (205) 534-4571
(Admission date 3/19/84)

CERTIFICATE OF SERVICE

I, Michael E. Brodowski, counsel for the Respondent, Catholic Family Services, pursuant to Rules 28.2, 28.3 and 28.5, of the Rules of the United States Supreme Court, hereby certify that I have this day served three copies of the foregoing Brief for the Respon-

APPENDIX A

THE STATE OF ALABAMA -- JUDICIAL DEPARTMENT

COURT OF CIVIL APPEALS OF ALABAMA

Civ. 3626

July 6, 1983,

Rehearing Denied August 10, 1983

Certiorari Denied November 4, 1983

Alabama Supreme Court 82-1136

WRIGHT, Presiding Judge

This case began March 11, 1980, by the filing of a petition to terminate the parental rights of Deborah Ann Kelley and Matthew Shuttleworth to a child born out of wedlock on January 1, 1980. The petition was filed by Catholic Family Services, which organization had been given custody of the child at birth by her mother. By judgments on March 11 and March 25, 1980, the rights of the parents were terminated and custody of

the child, with permission to place for adoption, was granted to Catholic Family Services.

On June 10, 1980, a Rule 60(b) motion was filed on behalf of the parents, who were then married, seeking to set aside the orders of March 11 and 25. After lengthy evidentiary hearing, the court entered a judgment on August 14, 1980, with extensive finding of fact, denying the 60(b) motion. Appeal of that judgment was brought to this court. We affirmed the judgment of the trial court by decision entered December 12, 1980, Kelley v. Licensed Foster Parents, 410 So.2d 894 (Ala.Civ.App. 1980). Our judgment was reversed by the Supreme Court of Alabama on October 2, 1981. Ex parte Shuttleworth, 410 So.2d 896 (Ala.1981). Application for rehearing

was denied by that court. An order of remand with directions was issued by this court, 410 So.2d 902, on February 24, 1982, to the trial court.

The remandment directions transmitted through this court to the trial court were contained in the last two sentences of the opinion. Id. at 901. Earlier in the opinion, the court determined that the order of the trial court terminating the father's parental rights should have been set aside upon hearing of the 60(b) motion because notice of the hearing for termination was not served in strict compliance with Rule 4.1(c)(2). Thereafter, the court noted that in hearing the 60(b) motion, the trial court held a "protracted custody hearing." The hearing was held without the presence of the adoptive parents. The supreme court set

out the principles controlling claims of custody between natural parents and foster parents. The court then stated that the issue of custody was best determined by the trial court and further said as follows:

> "For these reasons the judgment of the Court of Civil Appeals is due to be reversed and the cause is remanded to the Court of Civil Appeals with directions to reverse the judgment of the Family Court of Jefferson County and require it to hold a hearing to determine the parental rights of the petitioners in the light of the principles set forth in this opinion. The family court is also to determine if there has been a valid waiver of rights made by the petitioners.
>
> "Reversed and Remanded with Directions."

Upon application for rehearing, the chief justice (concurring in the result and denial of rehearing) added comment that the sole issue that should be considered by the trial court on remand

was "whether the natural father knowingly consented to the adoption of the child or otherwise waived his right to object." He further commented that the adoptive parents should remain anonymous.

Upon remand, motions were filed by Catholic Services for protection of the adoptive parents. Motions for discovery were filed by the natural parents. All motions were heard by the court on March 19, 1982. The trial court took all under advisement and sought from the supreme court clarification of its opinion of October 2, 1981. There was denial of clarification. The trial judge granted a motion of the natural parents to recuse and removed himself from the case.

In August 1982, the new trial judge denied Catholic Services' motion to protect the identity of the adoptive

parents. Catholic brought a petition for mandamus to this court. We granted the writ of mandamus. The effect was to preserve the anonymity of the adoptive parents until the issue of consent or waiver for the adoption by the father was determined by the trial court.

Petition for writ of mandamus to be directed to this court was granted with opinion on August 16, 1982. Ex parte Nice, 429 So.2d 265 (Ala. 1982). The supreme court reiterated much of its opinion of October 1981 and held that the trial court had broad discretion in permitting discovery to Shuttleworth. The court stated that discovery, of any information in the possession of Catholic Services "which might bear on the issue of whether the father waived his parental rights" was permissible. The court also

said that whether the identity of the proposed adoptive parents would be disclosed was a matter within the discretion of the trial court. However, it said that ordinarily the identity of proposed adoptive parents is not discoverable in a proceeding to rescind an adoption or to set aside an order terminating parental rights.

The chief justice entered a dissent joined by Justice Faulkner. The dissent pointed out that the area of disagreement with the majority was in the disclosure of the identity of the adoptive parents. It said the only issue to be heard was the validity, vel non, of the adoption proceedings. If the adoption was not valid, the natural parents were entitled to custody. If the adoption was valid,

the adoptive parents were entitled to custody. Thus the need to learn the identity of the adoptive parents so that relative fitness could be determined, was unnecessary in either case.

This court, in compliance with the directive of the supreme court, set aside its writ of mandamus. The trial court on October 20, 1982, set a hearing for December 6, 1982, upon the issue of consent and waiver of service of the adoption proceedings. Intervention of counsel for the adoptive parents was permitted on November 3, 1982.

The trial court heard testimony of ten witnesses on December 6 and 9, 1982, with arguments and written briefs. On January 12, 1983, the court entered a lengthy judgment including statement of evidence and finding of fact. The

conclusion was that Matthew Shuttleworth had waived all parental rights to object to the adoption of the child, Mary Ann Kelley. Shuttleworth appeals.

The preceding lengthy recital of the court history of this case is felt necessary for full understanding. To this court, the bottom line of history is that the present and future welfare of a child has been in limbo since its birth on January 1, 1980.

The primary issue presented by this, the third proceeding brought to us in this matter, is: did the court err upon remand in finding that Matthew Shuttleworth knowlingly consented to the adoption of Mary Ann Kelley or that he waived his rights to object?

In beginning our discussion, it must be recalled that the supreme court in

its decision of October 12, 1981, Ex parte Shuttleworth, 410 So.2d 896 (Ala.1981), reversed this court's affirmance of the denial of a 60(b) motion by the trial court. That motion alleged fraud, undue influence and misrepresentation by Catholic Services upon the mother to secure her relinquishment of parental rights, and consent to adoption of her child. The motion also charged improper service of notice of hearing to terminate parental rights of the father. This court held that the trial court did not abuse its discretion in denying the Rule 60(b) motion on either ground.

The supreme court granted certiorari and held that we had erred in finding that valid service of notice was had upon the father. Having found service of notice of termination of parental rights legally

insufficient, the court said as follows:

> "Having said all of this, we could stop here, reverse and remand the case, and leave dangling a very emotionally sensitive issue, as well as the future hopes and aspirations of several individuals, including a 21 month old infant."

The court then observed that the trial court, while entertaining the 60(b) motion, had, in effect, held a protracted custody hearing, though without the presence of the adoptive parents. It followed that observation with favorable comments about the natural parents and stated principles to be applied in custody claims between parents and nonparents. The supreme court concluded its opinion by stating that it was going to remand to the trial court for the "delicate balancing of these principles. . . ." The remand directions were then given as we previously quoted herein.

It is the best understanding of this court from these pronouncements of the supreme court that it considered that the hearing on the 60(b) motion expanded into a hearing to determine custody of Mary Ann Kelley as bewteen the natural and adoptive parents. It determined that setting aside the termination of parental rights of the father for failure of legal service did not conclude the "sensitive issue" of custody.

In its opinion in Ex parte Nice, supra, the court, referring to its opinion in Shuttleworth stated:

> "The third issue addressed but not decided was whether the unwed father had knowingly consented to adoption and whether the parents of the child had otherwise waived their rights to the child. We directed the Court of Civil Appeals to remand the cause to the family court of Jefferson County for a determination of this issue."

This clarification, followed by

discussion and quotations from the case of Williams v. Pope, 281 Ala. 416, 203 So.2d 271 (1967), must have caused the trial court to limit the hearing on remand to the issue of consent or waiver or right by the natural parents to object to the adoption of their child. It is our opinion that such was the proper issue.

[1] Though the mother is now claiming to have been misled and confused by the representations of the social worker for Catholic Services, Mrs. Dinwiddie, there is more than sufficient evidence to conclude the contrary. She first sought an abortion, traveling with her parents and Shuttleworth to Atlanta for that purpose. Upon being informed that an abortion was not medically advised, she sought the aid of Catholic Services in giving birth at a place away from her

hometown. She allowed her child to be taken from the hospital and placed in a foster home. She signed a petition and consent for termination of her parental rights and those of the father, and she appeared in court when the judgment of termination of her parental rights was entered. The court proceedings were instituted away from her home county at her direction. She served as intermediary and informant between Catholic Services and Shuttleworth, keeping him informed of each event and step toward adoption of their child. She contrived, consented to, and participated in every aspect of the proceeding. She therefore may not change her mind and undo what she has done. Williams v. Pope, supra.

[2] The father, Shuttleworth, though

not physically participating as fully as the mother, was kept fully informed of everything she was doing. He was present on the trip to Atlanta to secure an abortion. He was present at the birth of the child in Tennessee. He was informed of the role of Catholic Services in that birth and the removal of the child from the hospital. He never saw his child nor contributed to the expense at her birth. He knew that the mother had agreed to her adoption long before she was born on January 1, 1980. He was informed by the mother of the termination of her rights and her consent thereto on March 11, 1980. He admitted to being informed that there was scheduled another hearing for March 25, 1980, of which he was to receive notice, to terminate his parental rights. He acknowledged that

he did receive the registered letter advising him of the hearing and containing consent and waiver form, albeit the letter was not served procedurally according to statute. He acknowledged that he subsequently signed the form contained in the letter at the request of the mother and gave it to her to return to Mrs. Dinwiddie for filing. The court found Shuttleworth had the letter at least ten days prior to the hearing on March 25. He denies opening the letter and examining its contents though he gave it to the mother and discussed with her its contents and the form for waiver of notice and consent. He admits failing to keep an appointment with Dinwiddie set for the morning of March 25. The court was at liberty to disbelieve his denial of opening and examining an official letter

from the court, when he knew of its purpose. In fact, the testimony of Shuttleworth and the mother pertaining to misrepresentation and misunderstanding of events leading to the adoption is subject to disbelief.

[3, 4] There has been considerable reference to the signing of a jurat to Shuttleworth's signature on the form by Mrs. Dinwiddie as a notary public. That jurat was removed by Mrs. Dinwiddie because she had not actually performed it. Concern about the jurat has little importance - first, because we find no statutory requirement that consent for adoption be notarized; second, because the signature of Shuttleworth to the instrument is admitted. The form he signed was an admission of knowledge of the pending proceedings and of their purpose. It contained an acknowledgment

of service and waiver of further notice. There was consent to termination of parental rights and to placement for permanent custody and adoption. We recognize that the waiver was apparently signed after the hearing and judgment and was not filed in the court. However, it is evidence and indication of the knowledge and state of mind of Shuttleworth after he knew of the judgment terminating the rights of the mother and the pending hearing as to his parental rights.

For some three months subsequent to the termination of parental rights and the direction by the court to find adoptive parents, the Shuttleworths made no effort to set aside the judgment. When this proceeding was begun the child had been in the custody of Catholic Services for her lifetime of nearly six

months. The mother had seen her no more that three times. The father had never seen her. Foster parents had fed her, held her, loved her while the parents proceeded with their lives as though they never had a child, even though they were in daily company and subsequently married. The dark secret of her birth and being remained hidden from their friends. She was exiled in a foreign land - until she found love, care and protective parents who wanted her so badly that they would pay a fee of a thousand dollars to get her. Thereafter, her existence was no longer denied. She came alive in the arms of parents who were pround of her. Parents who surely announced to all that they had a daughter and that she had a family.

[5] Our supreme court spoke poignantly

of the family unit as the basic foundation of our society and the duty of courts to forge chains that will bind it together in its first opinion in this case (R. 901). We endorse that expression. However, chains of a family unit in this case have been forged between Mary Ann and her adoptive parents. They have been bound together for more than three years. Mary Ann knows no other parents or family. It does not require the wisdom of a King Solomon to decide the real parents of this child nor to recognize the devastating trauma which will strike her if her family unit is broken. A family unit is forged through love and caring, one for the other. It does not arise merely from birth and blood. If that were the test, this case would never have arisen.

In Ex parte Nice, supra, the supreme

court said:

> "[A] mere change of mind cannot justify the rescission of a decision to place a child for adoption if the natural parents have given an informed, intelligent consent and all the procedural safeguards have been followed."

It is our opinion that these conditions have been met; that the trial court correctly found as a fact that the mother consented and that the father with knowledge of the acts of the mother and the proceedings before the court, acquiesced therein and by his conduct waived his parental right to object to the adoption of his child. It is further our opinion that in regard for finality of judgment and in consideration of the best interest of Mary Ann, the motion 60(b) should be denied.

[6] The second issue presented is that the trial court after Ex parte Nice, supra, denied discovery of information

as to the adoptive parents, but permitted appearance of their attorney in the case. Shuttleworth also complains of the court receiving letters from counsel praising the adoptive parents. In response to this issue we note that the supreme court in Ex parte Nice, supra, expressly left discovery concerning the adoptive parents to the discretion of the trial court after specifically directing that the court's first course was to determine whether the "unwed father had knowingly consented to adoption and whether the parents of the child had otherwise waived their rights to the child." It is our conclusion that the trial court followed the mandate of the supreme court.

The trial judge did not solicit the letters received. He expressly stated he did not consider them and placed them

in the court file. The only issue before the court did not involve the consideration of the respective merits of the natural parents and adoptive parents. This court considers that counsel for the adoptive parents properly had an interest in the case (Rule 24, A.R.Civ.P) if only as amicus curiae. We find no error in allowing him to participate.

AFFIRMED.

BRADLEY and HOLMES, JJ., concur.

APPENDIX B

CASE ACTION SUMMARY

JUVENILE

Name: Case Number:

Matthews, Mary Ann JU-80-50402

Address:

Catholic Social Services

Filing Date: 3/11/80 Intake Off. Dunning

D.O.B. 1/1/80 Sex: F Race: W

Parents: Matthew Alan Shuttleworth
Deborah Ann Kelley aka
Deborah Ann Matthews

Attorney: Hon. John C. Fox, GAL, Child

Judge: Hon. G. Ross Bell

Prob. Off. Dunning Type Case: Termination

3-11-80: I hereby appoint Hon. John C. Fox, as Guardian ad Litem, to represent the interests of the infant, Mary Ann Matthews, in this case.

G. Ross Bell, Judge

This cause coming on for hearing and there being present in open court the petitioner and mother, Deborah Ann Kelley, also known as Deborah Ann Matthews, who is over the age of nineteen (19) years; Hon. John C. Fox, as Guardian ad Litem for the infant; Laura Dinwiddie, (sic) Social Worker with Catholic Social Services, and

It having been made to appear from the petition and from the evidence that said child was born out of wedlock and paternity has not been legally established it appearing that service has not been obtained on the putative father, and

It further appearing that the

mother is unable to provide a fit and suitable home for said infant and to provide for her future support, training and education, and therefore desires to be relieved of its cares and custody, all interested parties in open court having expressed consent and agreement that this be done, and

The Court having considered and understood the same, is of the opinion that it would be in the best interest of the future welfare of said child that the mother be relieved of its custody, and

The Court having found that said child is a dependent child under the age of eighteen (18)

years and in need of the care and protective supervision of this court, it is, accordingly,

ORDERED, ADJUDGED AND DECREED BY THE COURT that all parental rights which the mother, Deborah Ann Kelley, a/k/a Deborah Ann Matthews, has in or to the care and custody of said infant, Mary Ann Matthews, be and they are hereby terminated and severed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this cause be and is hereby continued to March 25, 1980, at 2:00 p.m., for the purpose of obtaining service on the putative father.

G. Ross Bell, Judge

3-25-80 This cause having been heard on March 11, 1980, at which

time the parental rights of the mother, Debroah (sic) Ann Kelley, also known as Deborah Ann Matthews, were terminated, and it being shown to the Court that service had not been obtained on the putative father, the case was continued to this date, and

This cause coming on for further hearing and there being present in open court Hon. Rizpah Morrow, as Guardian ad Litem for the infant; Laura L. Dinwiddie,(sic) Social Worker with Catholic Social Services, and

It having been made to appear to the Court that the putative father, Matthew Alan Shuttleworth,

does have knowledge of this hearing, has discussed the case with the social worker with Catholic Social Services indicating his consent, and having failed to appear, and

The Court having considered and understood the same, is of the opinion that it would be in the best interest of the future welfare of said child that the putative father be relieved of its custody, all interested parties in open court having expressed consent and agreement to the order herein made, it is, accordingly,

ORDERED, ADJUDGED AND DECREED BY THE COURT that all parental rights which the putative

father, Matthew Alan Shuttleworth has in or to the care and custody of said infant, Mary Ann Matthews, be and they are hereby terminated and severed, and the care, custody and control of said child is hereby committed to the Catholic Social Services for permanent placement or adoption.

Costs taxed in the amount of $25.50 and are hereby suspended.

G. Ross Bell, Judge

6-10-80 MOTION FOR RELIEF FROM JUDGMENT OR ORDER OF THE COURT TERMINATING PARENTAL RIGHTS OF PLAINTIFFS PURSUANT TO RULE 60(b), ARCP, OR IN THE ALTERNATIVE, FOR REVIEW UNDER THAT RULE, filed by Hon. Joel E. Dillard,

Attorney for the mother and father of said child, filed this date and said Motion set for hearing on July 1, 1980, at 9:00 a.m.

7-1-80 On motion of the attorney for the Catholic Social Services and Laura L. Dinwiddie, (sic) this cause is hereby continued to July 21, 1980, at 2:00 p.m., as said attorney is committed to another court.

G. Ross Bell, Judge

7-21-80 This cause coming on for hearing on motion heretofore filed on behalf of the mother and putative father of the child, and there being present in open court the Guardian ad

Litem, Hon. John C. Fox; the mother and putative father, with their attorney, Hon. Joel Dillard; Laura Dinwiddie,(sic) Catholic Social Service with their attorney Hon. Larry Morgan, and

The Court having heard the sworn testimony taken in open court, including that of Beverly Batchum, Laura Dinwiddie, (sic) Hugh R. Shuttleworth and Matt Shuttleworth, and due to the lateness of the hour, this cause is hereby continued to August 4, 1980, at 10:00 a.m. for the purpose of taking additional testimony.

On motion of the attorney for the parents, IT IS HEREBY ORDERED, ADJUDGED AND DECREED

that no adoption proceedings shall be held concerning the said Mary Ann Matthews pending this hearing.

G. Ross Bell, Judge

8-14-80 This cause coming on for hearing on Motion for Relief from Judgment, pursuant to Rule 60(b) filed by the attorney for the mother and father, and there being present in open court on July 21, 1980, the mother and father with their attorney, Hon. Joel E. Dillard; Laura Dinwiddie (sic) with the Catholic Social Services with their attorney, Hon. Larry Morgan; Hon. John C. Fox as Guardian ad Litem for the child, and

The Court having taken the

sworn testimony in open court of witnesses Beverly Batchum, Laura Dinwiddie, (sic) Hugh R. Shuttleworth, Matt Shuttleworth, and the cause having been continued to August 4, 1980, for further testimony, at which time the same parties were present with their attorneys and the sworn testimony was taken in open court of Deborah Ann Kelley, Harold Kelley, Marie Shuttleworth, Betty Kelley, Etta Dunning, and Laura Dinwiddie, (sic) at which time this matter was taken under advisement and continued for the purpose of the attorneys filing Memorandum Brief and Arguments.

The Court having received

excellent and well prepared briefs and arguments and read and considered same and having reviewed the sworn testimony taken in open court, along with the many exhibits presented in open court finds as follows:

Matt Shuttleworth and Deborah Ann Kelley are over the age of nineteen (19) years and while college students they began to date. It is admitted by all parties that Deborah Ann Kelley (hereinafter called the mother) became pregnant in the early part of 1979 and that the father of said expected child was Matt Shuttleworth (hereinafter called the father). The mother and father discussed this

matter in August, 1979, and eventually the parents of both the mother and father were told the situation. The parents of the mother and the father were supportive in these discussions with them and various alternative actions were discussed. The father offered to marry the mother, but the mother refused the offer. On November 1, 1979, the mother and father proceeded to Atlanta with the mother's mother and father, and the father's mother, for the purpose of obtaining an abortion for the mother. The clinic they visited made certain tests and informed them that the mother was too far advanced in her

pregnancy and that an abortion could not be obtained. The following day, the mother, her mother, and girlfriend visited Catholic Social Services and discussed with Laura Dinwiddie, (sic) the caseworker employed by the Catholic Social Services, the possibility of placing the expected child for adoption.

There is much conflicting testimony as to the actual conversations that occurred then and later between Laura Dinwiddie, (sic) the mother, and her mother. The mother testified that Laura Dinwiddie (sic) told them that if the child was placed for adoption, the natural mother and father

would have the right to stop all proceedings and get the child back within one year after the proceedings commenced. The mother also testified that she informed Laura Dinwiddie (sic) that the father of the child had stated that he would not go along with the adoption effort and she was told that there were ways of getting around the father's refusal to cooperate. Laura Dinwiddie (sic) testified that she explained the adoption procedure and that after the child was placed for adoption there would be a year in which the agency would supervise the placement to make certain it was appro-

priate before the final decree. She denies that she stated the parents could get the child back anytime within a year. Laura Dinwiddie (sic) also testified that she informed them that in certain types of cases the father was not named, but if the father was named, he would have to be notified. She further testified that she told them it was not necessary for the father to sign consent papers in order for his parental rights to be terminated.

The child was born in Jackson, Tennessee on January 1, 1980, and the father was present at tha time. At the hospital

the mother signed the papers necessary for the child to be removed from the hospital by Catholic Social Services and placed in foster care pending further efforts toward placing the child for adoption. Conversations and other contacts continued between the mother and Laura Dinwiddie (sic) concerning her efforts to have the child placed for adoption. The father did not have contact with the Catholic Social Services or had seen the child since its birth. The father testified that he never agreed with the mother's decision to place the child for adoption nor

did he make any effort to stop the procedure because of his concern for the mother's physical and emotional wellbeing. The mother testified that throughout this period she was under the influence of Laura Dinwiddie (sic) and dependent upon her for advise (sic) and counsel. She also testified that she was not well, physcially or emotionally. Although she persisted in her efforts to have the child placed for adoption, she testified she still felt that she would be able to change her mind later and get the child back within one year after the adoption proceedings were commenced.

At the request of the mother, the agency contacted this court and forwarded necessary preliminary material to file a petition requesting that parental rights to the child be terminated. On March 11, 1980, the mother, with her mother, came to Birmingham where they met with Laura Dinwiddie (sic) and proceeded to this court. A petition had been prepared for the mother to file, and this petition was shown to the mother and her mother with the request that they read and understand before signing. The mother read the petition and said that she understood the petition,

and she signed the petition before court personnel. She was also shown an affidavit which stated her desires to voluntarily have her parental rights terminated and after reading and stating that she understood the paper, she signed and acknowledged before a Notary Public. She appeared before the Judge of this Court in the company of her mother, Laura Dinwiddie, (sic) The Honorable John C. Fox, who had been appointed as Guardian ad Litem for the infant, and the Intake worker connected with this court. She was again asked by the Court if she understood the nature of the

proceedings and if this was what she wanted to do. She responded in the affirmative and The Court entered an order terminating her parental rights and continued the case to March 25, 1980, for the purpose of obtaining service on the father.

A notice was sent on that day to the father at his address in Decatur, Alabama. The letter was delivered to the address and Hugh R. Shuttleworth, the father signed the receipt for said letter. The letter was placed in the father's room and he was informed that the letter had arrived. The father testified

that he did receive the letter, that he knew it was addressed to him, and that it was from this court. He further testified that he did not open the letter but did discuss the letter with the mother. She told him the letter was a notice of the hearing held on March 25, 1980, concerning his parental rights and papers for him to sign. He told her that he would not sign any papers and should get a lawyer to fight the matter but that he would not participate in any proceeding to remove his parental rights.

The mother contacted Laura Dinwiddie (sic) on March 21, 1980, and told her that the

father would come in and sign the paper which the court had sent him agreeing to the termination of his parental rights. The appointment was not kept and the mother called and said that they would be in the morning of March 25, 1980, with the paper; however, that appointment also was not kept. The mother did bring to the Catholic Social Services office and deliver to Laura Dinwiddie (sic) the signed paper on March 28, 1980. The father testified that he did not know what the paper said, that he signed it only because the mother informed him that it was necessary to keep the

matter confidential. The father failed to appear in Court on March 25, 1980, at which time an order was entered terminating his parental rights.

The mother and father testified that they were in continuous contact and conversations about this situation. In May, they came to the conclusion that they wanted to get the child back. The grandparents of the child have backed them in their decisions in the past and are rendering every possible support they can in the present, with the promise to do so in the future. They contacted Laura Dinwiddie (sic) with the

request that the child be returned to them and she informed them that the child had already been placed for adoption and she was unable to return the child.

This is the type case that causes judges to have restless nights. In order to successfully place a child for adoption there must be a final termination of parental rights. If there is any uncertainty or equivocation on the part of the parent, the step certainly should not be taken. Every effort is made to ascertain that any person who is relinquishing their parental rights in order that their

child may be placed for adoption understands what he or she is doing and is doing it voluntarily. The problems which would result in having to remove a child who has been placed for adoption after the proposed adoptive parents have formed an attachment to the child and after the child has become accustomed to its new home and parents could be traumatic to all parties. In all matters concerning a minor child in this court, the goal is to keep ever in mind the present and future welfare and interest of the child.

This is not a hearing concerning a custody controversy.

It is a hearing on a motion to seek relief from the orders of this court entered on March 11, 1980 and March 25, 1980. In such a hearing, under Rule 60(b) of the Alabama Rules of Civil Procedure, the Court is given wide discretion. It has the duty to balance the interest of the parties involved. If an injustice has resulted, The Court must take into consideration the need for finality of judgments. Where many persons have relied on the judgment in good faith, they also must be considered. The burden is on the petitioner to show good cause for having failed to take appropriate action sooner

and prevented any resultant injury to others who have relied on the judgment. In this particular case, it is obvious that the young parents have reached a decision to change a procedure that was commenced and pursued by the mother and not formally objected to by the father. They seek to explain their failure to take appropriate action sooner by their misunderstanding, lack of knowledge, or being under the undue influence and fraudulent statements of the agency worker. The agency denies any fraudulent statements or undue influence on the mother.

It contends that it has acted in good faith and if there was misunderstanding on the part of the parents, it was not intentionally done. It also contends that acting upon the orders of this court they have placed the child for adoption. It is obvious that the proposed adoptive parents have acted in good faith and have taken a child in their home to be adopted. The Court is well aware that regardless of its decision, there will be much sadness concerning the placement of this child. The Court is of the opinion that if such sadness must exist, the ones who allowed it to come into

existence must be the ones to shoulder that burden.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the Motion for Relief from Judgment or Order of The Court Terminating Parental Rights should be and is hereby denied.

G. Ross Bell, Judge

8-18-80 It being shown to the Court than an appeal has been filed in this cause, along with a Motion to Continue Stay during Pendancy of Appeal, in which the parents attorney, Hon. Joel E. Dillard, moves for an order from this court continuing its stay of adoption proceedings during the pendancy of the appeal, and

The Court having heard the arguments of the attorneys is of the opinion that the motion should be and is hereby denied.

G. Ross Bell, Judge

8-15-80 Written Notice of Appeal filed to the Circuit Court of Appeals this date.

12-12-80 Order confirming trial's court decision filed this date. (Civil Court of Appeals)

10-2-81 Order of the Supreme Court of Alabama, Reverse, Remanded with Directions.

10-7-81 Motion for Expedited Hearing on Remand filed by Hon. Joel Dillard, attorney for the natural parents. Motion set for hearing on March 19, 1982, at 10:30 a.m.

10-7-81 Motion to Require Disclosure of the Names and Addresses of Any and All Parties Maintaining Custody, Control and/or Possession of Mary Ann Kelley, filed by Hon. Joel Dillard, attorney for the natural parents. Motion set for hearing March 19, 1982 at 10:30 a.m.

10-22-81 Response to Motion for Expedited Hearing on Remand filed by Hon. Susan M. Tuggle, attorney for Catholic Family Services.

2-5-82 Application for Rehearing Overruled, Alabama Supreme Court.

2-24-82 Order Reverse and Remanding with Instruction, Court of Civil Appeals.

2-26-82 Motion for a Protective Order with "Exhibit A" filed by Hon. Susan M. Tuggle, attorney for Catholic Family Services. Motion set for hearing on March 19, 1982, at 10:30 a.m.

2-26-82 Motion for Request for a Pre-Trial Hearing filed by Hon. Susan M. Tuggle, attorney for Catholic Family Services. Motion set for hearing on March 19, 1982, at 10:30 a.m.

3-19-82 This cause coming on as a pre-trial hearing on numerous motions previously filed in this matter and there being present in chambers Honorable Joel E. Dillard, attorney for petitioners; Honorable Susan Tuggle, attorney for the respondents; Honorable

John Fox, as Guardian ad Litem for the child, and

After hearing the statements and arguments of the attorneys, the Court, by consent of all present, takes this matter under advisement in order that it may contact the Alabama Supreme Court to determine the possibility of a clarification by the Alabama Supreme Court of its opinion dated October 2, 1981, and report back to the attorneys.

Decision concerning all previously filed motions are withheld pending this case being under advisement.

G. Ross Bell, Judge

3-19-82 Motion to Recuse filed this

date by Honorable Joel Dillard, attorney for petitioners.

3-23-82 Pursuant to the order dated March 19, 1982, the Court has contacted by telephone Mr. J. O. Sentell, Clerk of the Supreme Court of Alabama, to determine the possibility of a clarification of the Supreme Court's opinion dated October 2, 1981, and has been informed that there will be no further clarification by the Supreme Court of its said opinion, and the Court has so informed the attorneys.

It further being shown to the Court that a Motion to Recuse has been filed by the petitioners in this matter, and the Court

being of the opinion that it should be granted, it is, therefore,

ORDERED, ADJUDGED AND DECREED that the Judge and the Guardian ad Litem be and are hereby recused in this matter, and that the Presiding Judge of the Tenth Judicial Circuit be requested to assign another Judge to preside over the hearing required by the said opinion of the Supreme Court.

G. Ross Bell, Judge

10-20-82 At a Pre-Trial Hearing this date in which all parties were represented, the Court set December 6, 1982, at 10:00 a.m. for a trial in this cause.

The only issue to be heard

on that date is the question of service and waiver of service.

No discovery will be allowed until permission is granted by the Court. No discovery will be allowed from now until the date of this trial on December 6, 1982.

It is the opinion of this court that this order complies with the latest Supreme Court decision on a Petition for Writ of Mandamus in this case and dated August 16, 1982.

Charles M. Nice, Judge

11-3-82 Motion for Intervention, filed by Honorable Jim Beech on the 16th day of September, 1982, is hereby granted.

Charles M. Nice, Judge

1/12/83 This cause having been heard for two days on December 6 and 9, 1982, and there was present in open court Hon. Robert Sutton as Guardian ad Litem for the child; the parents, Matthew and Deborah Shuttleworth, with their attorney, Hon. Joel Dillard; Laura Dinwiddie, (sic) Catholic Social Services, with their attorney, Hon. Susan Tuggle; Hon. James L. Beech, attorney for the unidentified adoptive parents who were not present, and

The Court having heard the sworn testimony in open court including that of H.R. Shuttleworth, Mrs. H.R. Shuttleworth, Bobbie Shuttleworth,

Etta Dunning, Betty Kelley, Harold Kelley, Deborah Shuttleworth, Matthew Shuttleworth, Judy Johnson, Laura Dinwiddie (sic), and

After hearing the evidence, the arguments of the attorneys, reading the depositions and briefs filed by the parties, all of which having been considered, this Court finds as follows:

The facts of this case have been set out in the opinions of the Court of Civil Appeals of Alabama, 410 So. 2d 894, and the Supreme Court of Alabama, 410 So. 2d 896.

The Supreme Court of Alabama held that the critical question was whether a parent is

entitled to notice prior to the revocation of any parental rights he may have. The court cited Rule 13, Alabama Rules of Juvenile Procedure and Rule 4.1(c)(2) regarding service and held that said Rule 4.1(c)(2) must be strictly complied with. The Supreme Court found that said provisions "were not complied with" in this case. Said court reversed the Court of Civil Appeals which had affirmed Judge G. Ross Bell's decision of March 25, 1980, terminating the father's parental rights and placing the child with the Catholic Social Services for adoption.

The cause was ordered remanded to the Family Court of Jefferson County to determine the parental rights of the petitioners and to determine if there had been a valid waiver of rights made by the petitioners.

Then again in the case before the Supreme Court of Alabama, Special Term 1982; Ex parte: Charles Nice, Circuit Judge, Petition for Writ of Mandamus, In Re: In the Matter of Mary Ann Kelley, et al v. Licensed Foster Parents, the court repeated its previous decision that the unwed father was entitled to notice that he had not been afforded proper notice in that Rule 4.1(c)(2) Alabama Rules of Civil Procecure was

not complied with. The Supreme Court directed the cause to the Family Court of Jefferson County for a determination of whether the father waived his parental rights.

In his dissent the Chief Justice stated that "all the trial court needs to do is to determine whether there was a consent (or valid service) by the natural father sufficient to support the adoption."(fn 1)

The mother's consent to support the adoption is unquestioned. She had previously sought an abortion of this unborn child but was found by the doctors to have been too far into her pregnancy. On

March 11, 1980, she signed an affidavit requesting the "the court to terminate all my parental rights in and to the custody of this child in order that an adoptive placement might be made."

The father's behavior and actions from the time the mother first indicated her desire for an abortion until after his rights were terminated on March 25, 1980, are a study in ambivalence and indecisiveness. Time after time the father had the opportunity, had he so desired, to stop the proceedings toward the termination of his parental rights. He consistently

vacillated or remained mute when he should have been forthright, outspoken, even obtrusive and vociferous with his intentions on such an important matter.

Matthew Shuttleworth and his mother journeyed with Deborah Kelley and her parents to Atlanta, Georgia on November 1, 1979, to see a doctor about an abortion for Deborah. Deborah had told Matthew that she had contacted the Catholic Social Services and Laura Dinwiddie (sic) before the child's birth on November 2, 1979, and wanted to place the child for adoption.

The child was born on January 1, 1980. Matthew knew that

Laura Dinwiddie picked up the child at the hospital on January 4, 1980, for the purpose of adoptive placement. Not until almost six months later did Matthew contact the Catholic Social Services, and he never contacted this court.

Deborah told Matthew that he had rights over the child and Matthew stated he was going to get a lawyer and fight. He knew that Deborah went to court on March 11, 1980, and that her parental rights were terminated.

Matthew's father signed for the letter from the Family County of Jefferson County on March 13, 1980. Matthew

received the court letter on March 13, 14, or 15, 1980, and turned the letter over to Deborah. She told him it concerned his court hearing which was to be held in two weeks. But the letter was placed in Deborah's glove compartment of her car and it remained there until March 21st or March 28th, at which time the letter was voluntarily signed by Matthew and turned over to Laura Dinwiddie (sic) of the Catholic Social Services.

It is uncontroverted that Matthew voluntarily signed the document which constituted a waiver of his rights. Although the paper was not notarized,

it is inconceivable that Matthew, a college student, did not know what he was signing.

Matthew's excuses that he did not read the document on one of these dates because he might be late for a cosmetology class, and that he believed the document was for "confidentiality" purposes were anemic and lacked credence. In fact, much of his testimony appeared disingenuous.

The Court finds under Matthew Shuttleworth's testimony and the undisputed evidence, that prior to the hearing, he received from this court and possessed a document fully disclosing the nature of the

proceeding, the time and place of the hearing and his right to counsel. It was his sole decision not to open it, if in fact he did not.

The Court further finds that he knew Deborah had been to this court on March 11, 1980, concerning the adoption of the child and on March 12, 1980, the child's mother had informed him there would be a hearing on March 25, 1980, in this court about terminating his parental rights. He received the registered letter from this court on March 13, 14, or 15, 1980. He was informed that it pertained to termination of his rights. He was given the

name and whereabouts of the Judge handling the case prior to the hearing.

That by his action and his conduct he clearly waived his rights.

All the parties were at all times residents of Alabama and the fact that the child was born in Tennessee is immaterial.

This Court after seeing and hearing Matthew Shuttleworth testify, together with the other testimony received is convinced that the father's acquiesance amounted to a waiver of his rights and that he in effect consented to the termination of his rights to the child.

The Court finds that under

all the evidence heard in open court, most of which is undisputed, that the father received service from the court that was more than sufficient to satisfy all constitutional rights to notice and due process, and that it is for the welfare and in the best interest of the innocent child that this long tragic court proceeding be ended.

Therefore, This Court finds that all parental rights which the father, Matthew Alan Shuttleworth has in or to the care and custody of said child, Mary Ann (Matthews) Kelley, be and they are hereby terminated, that the best interest of said

child require it to remain in the custody of the adoptive parents, and that the petition filed under Rule 60(b), Alabama Rules of Civil Procedure, should be and is hereby denied.

Charles M. Nice, Judge

fn.1 The Chief Justice dissented on the question of whether discovery should be allowed to permit disclosure of the identity of the adoptive parents. Although the Family Court was granted the right to allow this disclosure, the Family Court denied petitioner's motion for discovery believing disclosure to be unnecessary.

3-30-83 This cause coming on for hearing on Motion to Supplement

Record, filed by Honorable Joel E. Dillard, and there being present in open court Honorable Susan Tuggle; Honorable James Beech; Honorable Joel Dillard; Honorable C. Cole as Guardian ad Litem for the child, and

The Court having heard arguments of the attorneys, hereby grants the Motion to Supplement Record.

Charles M. Nice, Judge

APPENDIX C

STATE OF ALABAMA)

COUNTY)

Personally appeared before me, the undersigned authority in and for said county and state, Matthew Alan Shuttleworth, who, being made known to me, deposes and says as follows:

My name is Matthew Alan Shuttleworth, being over the age of nineteen (19) years, and I am a resident of Decatur, Alabama.

I have been informed Deborah Ann Kelley (AKA) Deborah Ann Matthews gave birth to a baby girl on January 1, 1980, at Jackson-Madison County Hospital, in Jackson, Tennessee, and the mother has alleged that I am the father of said child. I neither admit nor deny that I am the father of said child.

It is my understanding that Deborah Ann Kelley (AKA) Deborah Ann Matthews has enlisted the aid of Catholic Social Services in Birmingham, Alabama, in making plans to place this child for adoption, and has petitioned the Family Court of Jefferson County for an appropriate order authorizing this action. If this is her plan and desire I would join in this request.

I herewith acknowledge service of summons of the pendency of the permanent custody proceeding in the said Family Court of Jefferson County, Alabama, now set for hearing on the 25th day of March 1980 at two o'clock p.m., under docket number JU 80 50402. I do Hereby enter my appearance in said proceeding and waive any other or further notice thereof.

I have been advised that I have the right to employ an attorney and seek counsel elsewhere, and that if I cannot afford to hire an attorney, one will be appointed by the court to represent my interests. I do not believe this to be necessary, and hereby respectfully petition the Court to consent and agree that an order be entered in said proceeding terminating all parental rights which I may have in or to the custody or control of said child resulting in being named as the putative father, and placing the permanent custody of said child with Catholic Social Services for permanent placement or adoption.

Dated this 28th day of March, 1980.

/s/ Matthew Alan Shuttleworth
Matthew Alan Shuttleworth

Sworn to and subscribed before me, this 28th day of March, 1980.

/s/ Laura Dinwiddie
Notary Public

My commission expires 7-29-80

Voided 3/28/80